**United States District Court**

For the Northern District of California

1

2

3

4

5

6           IN THE UNITED STATES DISTRICT COURT

7

8           FOR THE NORTHERN DISTRICT OF CALIFORNIA

9

10   MARGIE CHERRY and ESTORIA CHERRY, on          No. C 04-04981 WHA
     behalf of themselves and all others similarly
11   situated,

12          Plaintiffs,                            **FURTHER ORDER RE NOTICE**

13     v.

14   THE CITY COLLEGE OF SAN FRANCISCO
     ("City College") LAWRENCE WONG, in his
15   official capacity as President of the Board of
     Trustees, MILTON MARKS, III, in his official
16   capacity as Vice-President of the Board of Trustees,
     DR. NATALIE BERG, JOHNNIE CARTER, JR.,
17   DR. ANITA GRIER, JULIO J. RAMOS, RODEL
     E. RODIS, in their official capacities as members
18   of the Board of Trustees, and DR. PHILIP R. RAY,
     JR., in his official capacity as Chancellor,
19

20          Defendants.
                                                 /
21

22          The Court is disappointed that counsel failed to meet and confer over the form of class

23   notice as requested.  The two proposals, submitted separately by the parties, have been

24   reviewed.  Defendants' notice is rejected.  There is no opt-out right in a Rule 23(b)(2) class.

25   Defense counsel wholly ignored the identifying-information aspect of the order.  The notice is

26   also too repetitive.  Plaintiffs' notice will be used with the following changes:

27   1.     The title should be:  "**NOTICE OF CLASS ACTION LAWSUIT AND OPPORTUNITY TO**

28          **OBJECT TO YOUR CONFIDENTIAL IDENTIFYING INFORMATION BEING PROVIDED TO**

            **CLASS COUNSEL**."

United States District Court

For the Northern District of California

2. In the second paragraph, the first sentence should be deleted and replaced with: "If you are a member of the class, then your rights as a disabled student will be litigated to judgment and you will be bound by the outcome, favorable or not."

3. Add the following sentence at the end of the third paragraph: "Defendant City College contends that it is not required to remove all physical barriers so long as it provides reasonable access to its programs through alternative methods."

4. In the fourth paragraph, first sentence, delete "presently" and insert the exact trial date (January 9, 2006). Counsel should not be expecting a continuance absent good cause and a clear showing of diligence.

5. At the end of the fifth paragraph, after "IN THIS CASE," add ", FAVORABLE OR NOT."

6. In the sixth paragraph after "Ms. Estoria Cherry," add ", a student with cerebral palsy and scoliosis who allegedly uses a walker and/or a wheelchair at times."

7. In the seventh paragraph, last sentence, delete the phrase "or defenses" and at the end, add "so long as you do so promptly."

8. In the eight paragraph, fourth sentence, change "within 21 days of receiving this notice" to "within 21 days of the date of this notice." Make sure the notice is dated the same day it is mailed.

9. In the ninth paragraph, use a date in place of July 22, 2005 (if need be) that will be 21 calendar days after the date of the notice.

10. In the Court's address, add a further line after "Clerk of the Court" stating "c/o Ms. Dawn Toland."

11. In the tenth paragraph, change the first sentence from "you may consult the public file on the case at the office of the clerk in the courthouse" to "you may consult all electronically-filed documents in the public file from the two public computer terminals in the lobby of the Clerk's Office on the 16th Floor of the Courthouse."

12. Change the signature line to "United States District Judge."

1   13.   When both sides have vetted the revised notice, deliver a chambers copy to be signed.

2   On the date of the notice, defendants shall mail and/or email the notice as previously

3   instructed and keep an exact list of persons (and addresses) to whom it was mailed.  This

4   list shall be filed under seal and *ex parte* within one week thereafter.  Do *not* attempt to

5   further litigate issues regarding the form of this notice.  Please vet the final notice and

6   send it in by **JUNE 30, 2005**.

7

8   **IT IS SO ORDERED.**

9

10   Dated:  June 23, 2005

11   WILLIAM ALSUP
     UNITED STATES DISTRICT JUDGE

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

3